

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3750 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ZALAVAD EDUCATION TRUST

Versus

DHANGADHRA MUNICIPALITY

Appearance:

MR PM THAKKAR for Petitioner

RULE SERVED for Respondent No. 1

MR H P Raval for Mr PM RAVAL for Respondent No. 2

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 08/12/2000

ORAL JUDGEMENT

The petitioner above named, is a Public Trust,
registered under the provisions of Bombay Public Trust
Act under Registration No.F-169 dated 14.9.1982. The

petitioner claims that it is running a School in a rented premises at Dhangadhra in Dhangadhra Taluka in Surendranagar District. That the property in which the School is being run by the petitioner is belonged to Smt. Kanthagauri Kunverji Shah and the property has been taken on rent by the petitioner under a rent note dated 23.4.1985. It is further contended that the petitioner Trust has been paying rent at Rs.2000/- per month to the said landlady. It is the case of the petitioner that since the petitioner is a Public Institute running educational activity, is exempted from payment of tax being property tax payable to the respondent Municipality. That despite the said position, the said property is being taxed and the petitioner has, therefore, filed this writ petition under Article 226 of the Constitution of India for appropriate writ, order or direction for quashing and setting aside the notice issued by respondent No.2 on 5.3.1991 at Annexure 'C' to the petition and for preventing the respondent Municipality from taxing the said trust property and from recovering property tax from the petitioner trust in respect of the said property, saying that the respondents have no authority to tax the said property and levy of tax is against the rules framed by the respondent Municipality.

2. On receiving the said petition, notice was issued at the first instance and ad-interim relief in terms of para 6(B) was granted. Thereafter, rule was issued and the said interim relief was continued. Respondents have appeared pursuant to the service of rule. Respondents have filed affidavit-in-reply at page 22 mainly denying the contentions raised in the petition, showing that the petitioner trust has been paying rent to the landlady and, therefore, it is liable to pay tax in respect of the property occupied by the said trust. Thereafter, the petitioner submitted an application for amendment in the petition, wherein, it has been alleged that the respondent Municipality has not been taxing certain other properties in occupation of the trust running educational activities. That the Municipality, being a State, within the meaning of Article 12 of the Constitution of India, cannot discriminate between the two equals. That on the one hand, the respondent municipality has been taxing the trust property in respect of the petitioner whereas, exemption has been granted to other trust properties by the respondent municipality. That thereby the respondents have extended discriminatory treatment between the two equals which is not permissible in view of Articles 14,16 and 19 of the Constitution of India. Even on this count, it has been submitted that the

petitioner is entitled to equal treatment and if it is done, the petitioner will not be liable to pay tax in respect of the said property. It is, therefore, prayed that even on this consideration, the respondents be prevented from taxing the said property holding that the property in occupation of the petitioner is not liable to be taxed by the respondent municipality. Even these allegations have also been replied on behalf of the respondents. Affidavits and documents submitted by the parties are kept on record.

3. I have heard the learned Advocates for the parties and have perused the papers. The main contention of the petitioner is that the respondent municipality has framed rules for levy and collection of property tax and as per the rules, a trust property is not liable to be taxed and all trust properties have been exempted from payment of tax. Latest provision of rule has been shown by the respondent, by filing affidavit, wherein, rule has been quoted. It can be reproduced for ready reference as under:

"Rule-8 Exemption from Tax.

The following buildings and lands shall be exempted from the levy of this tax.

(a) All buildings and lands belonging to
public or educational, religious, social
or public health institutions;

(b) Open lands and fields exclusively used
only for agricultural purposes."

On a bare reading of the aforesaid rule, it becomes clear that all properties belonging to the trust or in occupation of a trust are not exempted from payment of tax for the purpose of property tax or house tax. It is true that the petitioner is a Public Trust, running educational activities. At the same time, it is also a fact that the petitioner is not the owner of the property in which the said activities have been going on. In fact, the petitioner Trust is a tenant of the landlady named as above and the petitioner trust has been paying monthly rent @ Rs.2,000/-. This fact is undisputable. Considering the aforesaid position of rule, it is very clear that when the petitioner trust is not itself the owner or proprietor of the property and when the petitioner trust is a tenant in respect of the said property and when the petitioner trust has been paying rent at the rate of Rs.2000/- per month to the landlady

named hereinabove, then in that event, considering the provisions of rule referred to hereinabove, it cannot be said that the aforesaid property is not liable to be taxed for the purpose of property tax i.e. house tax, by the respondent municipality.

4. An attempt has been made to argue on behalf of the petitioner that there are certain properties in possession of trusts running educational activities and those properties have not been taxed for the purpose of property tax by the respondent municipality and thereby discriminatory treatments have been extended by the respondent municipality to the petitioner trust by taxing the property of the petitioner trust. One thing is certain. The respondent is a Municipality, and therefore, it being a State within the meaning of Article 12 of the Constitution of India, is required to extend equal treatment to the equal subjects. Therefore, it is required to consider as to whether any discriminatory treatment has been extended by the respondent. For this purpose, the petitioner has given names of two persons showing that the respondent has been extended different treatment to those two persons. One of them is shown at sr.No.1693 in ward no.2 at page 6 of the register for the assessment of the properties liable for property tax. It has been argued on behalf of the petitioner that at sr.no.1693 the property has been shown and it has been mentioned that Dr. V C Mehta has been occupying a part of the said property. It is contended that Dr. Mehta is a tenant paying rent to the landlord, has been exempted from payment of tax. On the other hand, Mr H P Raval, learned Advocate for the respondent-municipality has made it clear that the annual letting value of this property has been assessed at Rs.1200/-. That after usual deduction, the taxable value has been assessed at Rs.1080/-. It is further argued by Mr Raval, learned Advocate for the respondent that the remaining columns No.9, 10, and 11 are blank which indicates that no exemption has been granted and the tax has been levied and collected on the said property. It has been argued by him that whenever the property has been exempted from payment of tax under rule 8(a) referred to above, then appropriate endorsement is made in columns No.9, 10 and 11. That in the present case, no such exemption has been given and, therefore, no entry showing exemption from payment of tax has been made in columns No.9,10 and 11 in the said register. Mr Raval has further argued that so far as entry at sr.no.1692 is concerned, under Rule 8(a), exemption has been granted and endorsements have been made in columns no.9,10 and 11 against the entry at sr.no.1691 and 1692. Therefore, it is very clear from

the above register that Dr V C Mehta has been occupying a property which has been taxed and tax has been recovered according to rules by the respondent and, therefore, there is no discriminatory treatment extended by the respondents towards the petitioner. Therefore, this ground is not available to the petitioner and, consequently, the petitioner cannot succeed on this aspect of the case, since there is no discriminatory treatment between Dr Mehta and the petitioner.

5. Another argument of the petitioner is that the respondent has not been taxing another property in occupation of one Unnathi Asthma Trust. That this also is a trust and that trust has been paying rent to the landlord and yet this trust has been exempted from paying property tax by the respondent. In this aspect of the case, the respondents have come out with a case that in affidavit at page 71 that the facts alleged by the petitioner are not true. The respondents have submitted in this affidavit at page 71 that the said statement made by the petitioner is not bonafide and that it is not made with due care and caution. That in respect of the said school, tax is levied and collected by the respondent Municipality. It is further contended that the said trust had raised an objection and had claimed exemption. That the said objection and request for exemption was turned down by the respondents and ultimately, the said property was assessed at Rs.1000/- thousand per month and is being taxed accordingly.

6. In support of the said contention, the respondents have submitted a certified extract from the assessment register at page 73. There, the aforesaid property has been shown at sr.no.277. It is shown that the annual receipt of rent is stated at Rs.12,000/- and usual deduction has been made and, therefore, the annual letting value has been assessed at Rs.10,800/- and necessary amount of tax has been mentioned in appropriate columns of this register. This document shows that even this property has been taxed and it has not been exempted. Therefore, the petitioner seems to have made the above allegations without proper enquiry and/or that the said statement was made on incorrect information. The position remains that the two properties shown by the petitioner have been taxed for the purpose of property tax by the respondent. Therefore, there is no discriminatory treatment extended by the respondents between the two equals. So far as the interpretation and appreciation of the rule is concerned, the rule makes it clear that when the property is occupied by a trust and if it is utilized for educational purpose, then the said

property cannot be exempted from tax, when it pays rent to the landlord. In the present case, the petitioner is a trust but it has been paying rent to the landlady. Therefore, though the petitioner is a Public Trust and is running educational activities in the said property, it is liable to be taxed, in view of the interpretation of rule 8(a) of the aforesaid rules. In fact, copy of the full text of the rules has been submitted by the respondents at page 43.

7. Mr H P Raval, learned Advocate for the respondents has made it clear that if the landlady of the petitioner Trust stops collecting rent and if the petitioner trust stops paying rent and if an application is submitted to the respondents along with affidavits clarifying the aforesaid position, then the respondents will naturally consider the said application appropriately and the respondent Municipality in such an event, would certainly extend exemption from property tax to the petitioner also. It is, therefore, open for the petitioner to consider the said aspect of the case. It is very clear that the petitioner trust is liable to pay property tax to the respondent and the respondent has not proved to have extended different treatments to two equals. In that event, the petitioner is not entitled to any relief and consequently the petition is required to be dismissed.

8. Ordinarily, in such events, the parties are not taxed with the cost of litigation. In the present case, we find that the petitioner trust has made certain allegations against the respondent and that too, without getting proper instruction and information from the relevant records. The petitioner trust could have approached the respondent municipality for supply of appropriate documents and certified copy thereof in order to ascertain as to whether some of the properties have been exempted for the purpose of property tax. But without making any efforts in this behalf, the present petition has been filed and allegations have been made that discriminatory treatment has been meted out to different trusts. This allegation is found to be without any foundation and without any enquiry into the matter. The petition is required to be dismissed and the petitioner should be saddled with costs.

9. In the aforesaid view of the matter, this petition is ordered to be dismissed with cost of the respondent. Rule is discharged. The interim relief granted at the first instance, shall stand vacated.

Learned advocate for the respondents has submitted that the respondent should be at liberty to recover the amount of tax with interest. Considering the facts and circumstances of the case and looking to the fact that the petitioner is after all a Public Trust, I do not find it just and proper to tax the Trust with interest on the amount of tax.

08.12.2000 [D P Buch, J.]

msp